IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10092 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHANAJI TAKHUJI & ANR. - Petitioner(s)
Versus
DEPUTY COLLECTOR (LAND REVENUE) & ANR. - Respondent(s)

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Appearance :
SHRI BHARAT JANI for Petitioner(s): 1 - 7.
SHRI L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s): 1-2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/01/2007

ORAL JUDGMENT

1. By this Writ Application the petitioners seek to challenge Order dated 28th October, 1991 passed by the Deputy Collector, Gandhinagar in Case No.Tenancy/Section-

65/S.R.37/86, directing resumption of the land under Section 65 for a period of ten years as the land was lying fellow and uncultivated for a period of two years. It is necessary to note that the said order was challenged by the petitioners before the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.141/93 and the Tribunal was pleased to return the Revision Memo along with its annexures on 25th November, 1993 holding that it had no jurisdiction to entertain the matter.

2. Shri Jani, learned Counsel for the petitioners, submits that the land, in fact, was jointly owned by the petitioners, but, no notice was issued to petitioner Nos.2 to 7 and in absence of notice to petitioner Nos.2 to 7, the proceedings under Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 (“the Act” for short) could not be continued, nor a final order could be made against the interest of the petitioners. It is also submitted that the petitioners had already obtained permission for non-agricultural use and under the circumstances, the State would not be entitled to resume possession of the property.

3. Shri Pujari, learned Counsel for the State, on the other hand, submitted that the notice was issued to

petitioner No.1, petitioner Nos.2 to 5 are his sons, while petitioner Nos.6 and 7 are grandsons of petitioner No.1. According to him, it is not the case of the petitioners that petitioner No.1 had no cordial relations with other petitioners or was acting contrary to their interest. He submits that grant of non-agricultural use permission subsequent to the lapses of the years 1983-84, 1984-85 and 1986-87 would not allow the petitioners to argue that there were no lapses at all.

4. On the last date of hearing, a submission was made that after obtaining non-agricultural use permission, certain constructions have been raised, therefore, it would be almost impossible for the State to manage the land for agricultural operations for a period of ten years.

5. In accordance with the directions of this Court, the petitioners have filed an affidavit wherein they have clearly stated that after obtaining non-agricultural use permission, no construction has been raised on land.

6. It is necessary to note that permission for non-agricultural use was granted on 7th September, 1989,

the permission would lapse if no construction is raised within the period specified in the order. Almost about seventeen years have passed, but, the petitioners have not raised any construction on the land, nor have changed the position irretrievably.

7. The provisions of law show that if particular land is not used for agricultural operations for two consecutive years and the reason is not beyond the control of the tenant, then, the State is entitled to take possession of the land and manage the same for a period of ten years. In the present case, when the notices were served upon petitioner No.1, he did not appear in the Court of the Collector nor submitted his say that there were no lapses on his part. If that be so, then, the order passed by the learned Deputy Collector would not suffer with any illegality.

8. From the order dated 28th October, 1991, it would clearly appear that various revenue records were produced before the Deputy Collector and after examining the same, he recorded his satisfaction that the land was lying fellow for consecutive period of three years. If that finding is unassailable in the writ proceedings, then, the consequence would be resumption of the land for

a period of ten years.

9. Section 65(1A) of the Act provides that management of the land shall be taken over by the Government for the purpose of agriculture for a period to be fixed by the State Government. However, such period shall not exceed ten years in aggregate. In a case where the maximum period is fixed in the first order, then, in the opinion of this Court, special reasons were required to be assigned by the Authority as to why the maximum period was being fixed. Section 65(1A) of the Act does not say that the minimum period would be ten years and if that be so, the Authority is required and obliged to apply its mind to the facts of the case and pass necessary orders fixing the minimum period with liberty in its favour to extend the period from time to time.

10. In the present case, the Deputy Collector, while fixing the period of ten years, has not applied his mind to the facts of the case. Even while maintaining the order for resumption of the land, I will set aside fixing the period of ten years and would remit the matter back to the Deputy Collector for fixing the period after giving an opportunity of hearing to the petitioners.

The petitioners, along with a copy of this order, shall appear on 19th February, 2007 before the Deputy Collector, who had passed the order dated 28th October, 1991. After receiving the copy from the present petitioners, the Deputy Collector shall fix a date for hearing and shall pass necessary orders in accordance with law and the observations above mentioned. It is, however, made clear that if the petitioners do not appear before the said Deputy Collector on the said date, then, the Deputy Collector shall be free to proceed *ex parte*. Let a copy of this order be sent through the Registry of this Court to the Deputy Collector (Appeals), Gandhinagar. Rule is made absolute to the aforesaid extent. No costs.

[R.S.Garg, J.]

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